IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1942

No. 672

ROBERT C. REED, BESSIE B. REED AND F. W. CROLL, JR.,

Petitioners,

vs.

CHICAGO NORTH SHORE AND MILWAUKEE RAILROAD COMPANY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

VINCENT D. WYMAN,
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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Summary and Short Statement of the Matter Involved.

Petitioners, Robert C. Reed, Bessie B. Reed and F. W. Croll, Jr., pray that this Court grant the writ of certiorari to review the judgment of the United States Circuit Court of Appeals for the Seventh Circuit rendered December 2, 1942 (R. 663), affirming the decree of the District Court of the United States for the Northern District of Illinois, Eastern Division, entered July 29, 1942 (R. 633), which

decree approved a petition for reorganization of the Chicago North Shore and Milwaukee Railroad Company under Chapter X of the Bankruptcy Laws of the United States, and dismissed one filed under Chapter VIII of the Bankruptcy Laws of the United States, both filed by these petitioners (R. 3 and 8). The Court below, evidently entertaining the same uncertainty which prompted petitioners to file separate petitions under each section, directed these petitioners to appeal (R. 643), and, since the affirmance by the Circuit Court of Appeals, has requested these petitioners to file this petition for certiorari. Since the Circuit Court of Appeals treated the two petitions as the subject of one appeal before it and delivered one opinion, we present but one petition here.

Chapter X of the Bankruptcy Act, Section 106 (Subsection 3) provides for reorganization under that Chapter of "any railroad corporation except a railroad corporation authorized to file a petition under Section 77 of this Act."

Chapter VIII (77m) excludes from the scope thereof the reorganization of "a street, a suburban, or interurban electric railway which is not operated as a part of a general railroad system of transportation or which does not derive more than fifty per centum of its operating revenues from the transportation of freight in standard steam railroad freight equipment."

This Court in *United States* v. *Chicago North Shore and Milwaukee Railroad Company,* 288 U. S. 1, held that this railroad is an interurban electric railway as that term is used in Section 20a of the Interstate Commerce Act.

United States Circuit Court of Appeals for the Seventh Circuit in *Sprague* v. *Woll,* 122 Fed. 2d 128, sustained an Interstate Commerce Commission finding that the Road was *not* a street, interurban, or suburban electric railway within the meaning of the Railway Labor Act, the Railroad

Retirement Act and the Carriers' Taxing Act, and that it was part of *the* general steam railroad system of transportation.

The Road operates in the states of Illinois and Wisconsin, with southern terminal in Chicago and northern terminal in Milwaukee (see map, R. 618). While less than twenty per cent (20%) of its revenue is from freight, it has a number of electric locomotives, and has hauled as much as fifty to sixty-five cars of freight in one train (R. 563, 425). Even before the war the road hauled a million and a half tons of carload freight a year, practically all of which is interchanged with steam lines (R. 462, 463, 538). Between the years 1925 and 1937 the freight tonnage moved increased over two hundred per cent, whereas the number of passengers decreased over twenty-seven per cent (R. 478, 495). In a two week period carload shipments were handled which originated in twenty-seven different states from the Gulf to Canada, and between and from the East to the West coasts (R. 466). The Road owns modern terminal facilities similar to that of steam railways. Ninety-three per cent of its right of way is privately owned by it (R. 453). It operates one hundred thirty-eight miles of road (R. 566). From Milwaukee City limits to Chicago City limits the average speed of through trains is fifty-five miles an hour, including six stops. The Road competes with the Chicago and Northwestern Railroad on a time and service basis (R. 293, 372, 472). The time table in evidence (R. 605) discloses the character of freight and passenger service offered to the public.

Statement as to Jurisdiction.

A. Jurisdiction of this Court is invoked under the Judicial Code (Title 28 U. S. C. C. A. Section 347), providing for review of judgments of the Circuit Court of Appeals.

B. The claim of petitioners exceeds $2,500,000.00 (R. 3).

C. The proceedings are under the bankruptcy laws of the United States; the judgment of the Circuit Courts of Appeals entered December 2, 1942 was final in character.

Questions Presented.

1. Is Chapter X or Chapter VIII of the Bankruptcy Laws of the United States the proper vehicle for reorganization (a) in view of the conflicting decisions of this Court, and of the Circuit Court of Appeals in the two previous cases and in this case? (b) In view of the fact that the Road, while doing an interurban passenger business, does more than interurban business in its freight transportation and in its through high speed passenger traffic?

2. Does the phrase in Chapter VIII of the Bankruptcy Act "part of *a* general railroad system of transportation" refer to a system like the New York Central or the Pennsylvania Railroad, or to a connecting group of railroads not necessarily under common control, but interchanging business over lines with common freight exchange points?

Reasons Relied On for the Allowance of the Writ.

1. The decisions of this Court in *United States* v. *Chicago North Shore and Milwaukee Railroad Company,* 288 U. S. 1, of the Circuit Court of Appeals for the Seventh Circuit in the case at bar, and in *Sprague* v. *Woll,* 122 Fed. (2d) 128 are in conflict. The status of the Road as to the jurisdiction of the State and Interstate Commerce Commissions should be definitely settled.

2. The questions presented as between the particular statutes involved are ones of first impression.

PRAYER.

Wherefore, your petitioners, Robert C. Reed, Bessie B. Reed and F. W. Croll, Jr., respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Seventh Circuit, commanding that court to certify and transmit to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in a case numbered and entitled on its docket, No. 8082, *Robert C. Reed, Bessie B. Reed and F. W. Croll, Jr., Petitioners-appellants* v. *Chicago North Shore and Milwaukee Railroad Company, Respondent-appellee,* and that the judgment of said court, affirming the decree of the District Court, may be reversed by this Honorable Court; and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just.

VINCENT D. WYMAN,
Counsel for Petitioners.

AUSTIN L. WYMAN,
DANIEL P. NAGLE,
Of Counsel.

BRIEF IN SUPPORT OF PETITION.

I.

The road is more than an electrically operated interurban railroad, i. e., it is not an electrically operated interurban railroad falling within the statutory exception to the applicability of Chapter VIII, Section 77, as a reorganization vehicle.

In *United States* v. *Chicago North Shore and Milwaukee Railroad Company,* 288 U. S. 1, the status of the road arose under Section 20a of the Interstate Commerce Act, which exempts electrically operated interurban railroads, unless "part of *a* general *steam* railroad system of transportation." (All italics in this brief are ours.)

The questions involved in *Sprague* v. *Woll,* 122 Fed. (2d) 128, arose under the Carriers' Taxing Act (45 U. S. C. Sec. 261), the Railroad Retirement Act (45 U. S. C. Section 228a), and the Railway Labor Act (45 U. S. C. Sections 151-163), under each of which acts the definitions of railroads or carriers subject thereto are identical; they exclude interurban electric railways, unless operated "as part of *a* general *steam* railroad system of transportation," but provide that the exclusory language shall not be deemed to exclude "any part of *the* general steam railroad system now or hereafter operated by any other motive power." The exclusory language in the case at bar, as previously pointed out, is in Chapter VIII, Section 77 (m) against an interurban electric railway "which is not operated as a part of *a* general railroad system of transportation, or which does not derive at least fifty per cent of its revenue from freight."

When this Court held the Road an interurban under Section 20a of the Interstate Commerce Act, it is apparent from the language of the opinion (288 U. S. 1) that it did so upon these considerations only:

(a) That the Interstate Commerce Commission had never objected to the failure to submit securities issued to it for approval until many millions of dollars' worth had been in the hands of the public, and that, therefore, the rule of administrative construction was deemed applicable.

(b) That except for the necessity of applying this rule in order to prevent injustice to the investing public, the Court would have been inclined (the opinion twice emphasizing the closeness of the question) to rule on the record then before it that the road was either part of *a* general *steam* railroad system of transportation, or, in any event, was "more" than an interurban.

Changes in the Road's operation and additional testimony in the present record tend more strongly toward steam railroad definitions. While Your Honors commented in 288 U. S. 1 on the fact that "grades are heavier than those customary with steam railroads, and some of the curves are of so short a radius as not to permit the passage of a steam locomotive," the instant record shows that such conditions are not applicable to the main through route (see map, R. 618) through the Skokie Valley (R. 259, 297-300, 303, 321). While this Court found that the road had seven small type electric locomotives and was unable to haul freight trains of the size usually employed by steam railroads, the present record shows trains as long as fifty cars are hauled on the Road, and in some instances as many as sixty-five (R. 563). While this Court found that the North Shore maintained no facilities for receipt or delivery of carload freight at its termini at Chicago and Milwaukee,

and could not accomplish the interchange of such freight at either, the present record shows affirmatively that carload freight can be handled and interchanged between the two cities (R. 259, 265, 276, 306, 308-11, 352, 424-8 and 455).

While this Court found that in 1930 seventy-eight per cent of all traffic was interline, providing only forty-two per cent of the Road's freight revenue, by 1937 the present record shows the proportion of freight revenues from interchange business with other lines rose from forty-two per cent to nearly seventy-two per cent, and the proportion of freight tonnage so interchanged from seventy-eight per cent to ninety-three per cent (R. 463).

Since the record last before Your Honors, the three Electroliners have been added (see time table, R. 605).

The Road meets the requisites for classification as something "more" than an interurban laid down in *Texas Electric Railway Company* v. *Eastus, et al.*, 25 Fed. Supp. 825, affirmed without opinion in 308 U. S. 511 (under the Railway Labor Act), *i. e.*, the North Shore is engaged in the general transportation of freight, even though its freight is less than its passenger revenue; it handles the bulk of such freight in standard steam railroad equipment; it freely interchanges freight with steam railroads and participates with them in standard rates; and transports a considerable portion of its freight in interstate commerce.

The Company offers, by its time tables and otherwise (R. 605, 472), through passenger service, including railroad and Pullman tickets to any place on the Continent, through baggage checking service, telegraphic service to all parts of the country for delivery of tickets, and complete travel tour information and service. With the addition of the Electroliners it furnishes luxury diner-lounge and tavern-

lounge cars, as shown at Record 605 and 606—far surpassing anything known to "interurban" transportation.

This Court found the problem of classification of the Road "not free from difficulty" in 1932. It must seem much clearer now, with no investors' rights involved, nor any question of administrative construction, that the Road, though doing an interurban business (just as does a railroad running trains from Washington to Philadelphia), is actually "more" than an interurban within the statutory definition.

Further, this Court denied certiorari on the application to review in *Sprague* v. *Woll,* 122 Fed. 2d 128. True, that case came to the Circuit Court of Appeals from the Commerce Commission, and all that the Court was required to find was that there was "substantial evidence" to justify the Commission's conclusions. That same record, with the exception of the few pages added here, constitutes the record in this Court in this case. It is not apparent why the District Court, on the same printed record, reached a different conclusion in this case than did the Commerce Commission in its report in the previous case (R. 557). If substantial evidence existed in *Sprague* v. *Woll,* 122 Fed. 2d 128 to support the finding that the Road was part of *the* general *steam* railroad system of transportation, the same testimony *must* show conclusively that the Road is something more than an interurban.

II.

The Road is a part of a general railroad system of transportation.

Under Chapter VIII (Sec. 77) an electrically operated road which is part of "a general railroad system" of transportation is not within the exemption of electric interurbans from the applicability of the Act. The same language appears under Section 20a of the Interstate Commerce Commission Act involved in the first case before this Court on the subject, except that instead of the words "a general railroad system," the words used in the Interstate Commerce Act are "a general *steam* railroad system."

If this Court in deciding *United States* v. *Chicago North Shore and Milwaukee Railroad Company,* 288 U. S. 1 had any doubt about whether the Road was part of *a* general railroad system of transportation (treating the word "system" as having the definition given it by the Circuit Court of Appeals in the case at bar, R. 668), it did not voice such doubt in its opinion. If, as must be inferred from the Court's opinion in that case, no question existed as to whether the Road qualified as part of a "railroad system," but that the Court believed the Road not part of a "*steam* railroad system," we assert that the omission of the word "steam" from the definition in Chapter VIII of the Bankruptcy Act is of great importance. When this Court impliedly approved, by the denial of certiorari, the Circuit Court of Appeals finding in *Sprague* v. *Woll,* 122 Fed. 2d 128 that the Road was part of *the* general steam railroad system of transportation (which meets neither of the statutory definitions under those acts, which are "part of *a* general *steam* railroad system of transportation," or of "*the* National transportation system"), it would seem

that some weight should be given to that finding in considering whether under Chapter VIII, Section 77 of the Bankruptcy Act the Road was part of *a* general railroad system of transportation.

We contend, therefore, that the definition by the Circuit Court of Appeals of a system as referring to the Pennsylvania system, the New York Central system, etc., is not in conformity with the previous decisions applicable to this Road; but if it is necessary to use such a technical definition of system, the North Shore itself may be deemed to be a railroad "system"—it owns two subsidiary companies (R. 17 and 18). Had the Court in 288 U. S. 1 given to the word "system" the meaning given by the Circuit Court of Appeals in the instant case (R. 668) there could have been in the Court's mind none of the doubt expressed in the opinion, for this Road never claimed to be part of any other specifically named "system." If, as seems more likely, the word "system" as used in the statute applies to groups of roads loosely described as the eastern roads, the western roads, the southern roads, etc., this Road is part of the mid-western railroad transportation system, with terminals in two of the large cities of the country, and with a large number of other communities served between the two terminals, including the vast camps of the armed forces at Fort Sheridan and Great Lakes (R. 619). It advertises connections with all the great railroads of the country which have Chicago terminals (R. 627).

It is true that Chapter VIII, Section 77 contains specific language, the effect of which is to say that an electrically operated interurban is not an interurban, if fifty per cent (50%) or more of its revenue comes from freight. This does not mean, as suggested by the Circuit Court of Appeals opinion, that an independently owned electrically operated railroad must be only an interurban if its freight revenue is *less* than fifty per cent (50%) of its total.

Conceivably, a high-speed electrically operated passenger road might run from coast to coast, and certainly would not be classified as interurban, whether or no it carried *any* freight.

The Road's position as to the jurisdiction of State or Federal Commerce Commissions should be definitely settled. As the law now stands, after the Circuit Court of Appeals decision sought to be reviewed here, the Road is an electrically operated interurban railroad for the purpose of the approval of its securities under Section 20A of the Interstate Commerce Act, it is part of *the* general *steam* railroad system of transportation under the Carriers' Taxing Act, the Railway Labor Act, and the Railroad Retirement Act, and it is an electrically operated interurban not part of *a* general railroad system of transportation, for the purposes of reorganization under Chapter VIII, Section 77 of the Bankruptcy Act.

Respectfully submitted,

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Of Counsel.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENT IN OPPOSITION.

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BRIEF FOR RESPONDENT IN OPPOSITION.

Opinions Below.

The United States Circuit Court of Appeals for the Seventh Circuit rendered its opinion on December 2, 1942 (R. 663), which is reported in 131 F. 2d 458, affirming the decree of the District Court of the United States for the Northern District of Illinois, Eastern Division, entered July 29, 1942 (R. 633), which has not been reported, and which decree approved a petition for reorganization of the Chicago North Shore and Milwaukee Railroad Company under Chapter X of the Bankruptcy Laws of the United States and dismissed one filed under Chapter VIII of the Bank-

ruptcy Laws of the United States, both petitions having been filed by the same individuals.

Jurisdiction.

The decree of the Circuit Court of Appeals was entered on December 2, 1942 (R. 663). The petition for writ of certiorari was filed on January 23, 1943. The jurisdiction of this Court is invoked under the Judicial Code (Title 28 U. S. C. A. Section 347), providing for review of judgments of the Circuit Court of Appeals.

Questions Presented.

1. Whether, in view of the fact that the bankruptcy statutes specifically provide that the judge shall summarily determine the issues presented, the Circuit Court of Appeals was correct in holding that the District Court had properly interpreted its function under the bankruptcy statutes to the effect that said District Court was duty bound to consider the facts and law independently and to use its own judgment in reaching a conclusion instead of merely acting as a reviewing court as had been its duty to act in the previous Labor cases which involved statutes providing for administrative instead of judicial determination of the facts.

2. Whether, in view of the difference between the function of the District Court under the Bankruptcy statutes and its function in the Railway Labor Act—Railroad Retirement Act case and the difference in the elements of statutory exclusion as pointed out by the Circuit Court of Appeals in differentiating the present Bankruptcy case from the former Labor cases, there is any merit to the contention that decisions in the two cases are conflicting.

3. Whether, in view of the fact the District Court was called upon to exercise the same statutory function as to judicial determination of the facts in the present Bankruptcy case that it did in the Securities case affirmed by this Court in 288 U. S. 1 and in view of the close identity of the elements of statutory exclusion involved in that case and in the instant Bankruptcy case, the decision of the Circuit Court of Appeals in affirming the exclusion of the respondent carrier from Chapter VIII of the Bankruptcy Act is in conflict with the decision of this Court in affirming the exclusion of the same carrier from the Securities section (20a) of the Interstate Commerce Act.

4. Whether in the circumstances of this case the Circuit Court of Appeals was correct in finding there was no error in the ruling of the District Court that the North Shore (respondent) is an interurban electric railway which is not operated as a part of a general railroad system of transportation and does not derive more than 50 per centum of its revenues from the transportation of freight in standard steam railroad freight equipment, and hence that it is not eligible for reorganization under Chapter VIII of the Bankruptcy Act, section 77, and that the petition under Chapter X was properly filed.

The Statutes Involved.

Chapter VIII, Section 77, of the Bankruptcy Laws of the United States by its terms provides a method of reorganization for certain railroads but excludes therefrom certain other railroads, the language of inclusion and exclusion being as follows (11 U. S. C. Sec. 205m):

> "(m) The term 'railroad corporation' as used in this section means any common carrier by railroad engaged in the transportation of persons or property in interstate commerce, except a street, a suburban, or interurban electric railway which is not operated as a part of a general railroad system of transportation or which does not derive more than 50 per centum of its operating revenues from the transportation of freight in standard steam railroad freight equipment."

Chapter X of the Bankruptcy Laws of the United States by its terms provides a method of reorganization for certain non-railroad corporations and "any railroad corporation excepting a railroad corporation authorized to file a petition under section 77 of this Act." (11 U. S. C. Sec. 506.)

Chapted VIII, Section 77 of the Bankruptcy Laws with respect to involuntary petitions (such as the one here involved) provides for the filing of answers to the petition and then states who shall determine the issues involved in the following language (11 U. S. C. Sec. 205a):

> "* * * If such answer shall deny either the jurisdiction of the court or any material allegation of the petition the judge shall summarily determine the issues presented by the pleadings without the intervention of a jury and if he shall find that the material allegations are sustained by the proofs and that the petition complies with this section and has been filed in good faith, the judge shall enter an order approving the petition; otherwise he shall dismiss the petition."

Chapter X contains substantially the same provisions (11 U. S. C. Sec. 543):

> "If the answer of a debtor shall controvert any of the material allegations of the petition, the judge shall, as soon as may be, determine, without the intervention of a jury, the issues presented by the pleadings and enter an order approving the petition, if satisfied that it complies with the requirements of this chapter and has been filed in good faith and that the material allegations are sustained by the proofs, or dismissing it if not so satisfied."

Statement.

As petitioners' statement does not contain all that is material to a determination of the questions presented and is in some respects inaccurate this further statement becomes necessary.

While this case marks the third instance wherein the United States District Court for the Northern District of Illinois, Eastern Division, has been called up to consider the status of respondent, the Chicago North Shore and Milwaukee Railroad Company, under statutory exclusion language applicable to interurban electric railways, each case has involved different statutes pertaining to entirely different subject matters.

The first instance involved jurisdiction over the issue of securities under section 20a of the Interstate Commerce Act. Under that Act the duty of determining the jurisdictional facts devolved upon the District Court which found respondent to be an interurban electric railway not operated as a part of a general steam railroad system of transportation and to be excluded from the provisions of said section 20a (R. 210-211). This Court affirmed that decision in *United States and Chicago North Shore and Milwaukee Railroad Company,* 288 U. S. 1.

The second case arose under the Railway Labor Act, the

Railroad Retirement Act and the Carrier's Taxing Act. Collective bargaining, wages, working conditions, pensions and kindred matters were covered by those Acts. Each Act contained an identical specific statutory provision for administrative determination by the Interstate Commerce Commission of the jurisdictional facts, and that Commission, acting pursuant to such statutory direction, made a determination to the effect that respondent was not excluded from those Acts (R. 557-571). The District Court in reviewing that determination, found it to be supported by substantial evidence, and not to be in conflict with the decision of this Court in the aforementioned Securities case. The Circuit Court of Appeals affirmed the lower court and certiorari was denied by this Court.

In the present case, which arises under the Bankruptcy statutes and presents the question as to whether Chapter VIII or Chapter X of the Bankruptcy Act is the appropriate vehicle for reorganization, the District Court is specifically empowered by the provisions of the Act to summarily determine the issues presented (11 U. S. C. Secs. 205(a), 543).

After an independent consideration of the record (containing, upon stipulation (R. 31), substantially the same factual evidence as in the Labor case except for additional passenger and freight revenue figures, data as to amount of revenue derived from transportation of freight in standard steam railroad freight equipment and time table), the District Court found Chapter X and not Chapter VIII to be the proper statutory vehicle for reorganization of respondent (R. 633). In affirming that decision, the Circuit Court of Appeals carefully differentiated the instant case from the Labor case and in effect found no conflict to exist (R. 663).

It in its opinion the Circuit Court of Appeals states that there can be no question but that respondent is not "operated as a part of a general railroad system of transportation", expressing agreement with the District Court that

the language employed in the statute clearly denotes that Congress contemplated some *particular* operating railroad system exercising management, control and supervision over a particular street, suburban or interurban, and finds that from the evidence no such control or supervision exists; and then points out that the District Court found that respondent was essentially a passenger railroad, with its revenues from passenger transportation averaging about 77% of its transportation revenues, and from freight about 23%, and that only 17% of its operating revenues were derived from the transportation of freight in standard steam railroad freight equipment (R. 663).

The evidence in support of the percentages referred to in the opinion of the Circuit Court of Appeals is contained in exhibits appearing in the Record at pages 33 to 38, inclusive (offered at p. 29), and pages 527 to 534, inclusive (offered at pp. 384 to 387, inclusive).

Respondent has its entrance into Milwaukee, one of its main terminals, over street car tracks and in conjunction with a street car service on a paved street in common with general vehicular traffic on the street, and respondent operates into the City of Chicago, the other terminal, over the elevated structures of Chicago Rapid Transit Company (R. 428).

The findings and conclusions made by the District Court are full and complete (R. 633-643). These permit of no inference as to that court entertaining the same uncertainty which prompted petitioners to file petitions under both Chapter VIII and Chapter X of the Bankruptcy Act. Because of the general description of the carrier and its method of operation contained in the findings of the District Court a detailed description herein beyond what is set out above would appear to result in unnecessary repetition. Petitioners in their statement have set forth a descriptive picture which emphasizes elements not germane to the statutes involved.

Summary of Argument.

1. The District Court under the bankruptcy reorganization statutes involved was called upon to exercise original jurisdiction and not to act as a court of review.

2. Acting in such capacity, the function of the court was to itself determine as a mixed question of fact and law to which Chapter of the Bankruptcy Act the respondent railroad was subject for reorganization purposes.

3. No conflict exists between the decision of the Circuit Court of Appeals affirming the District Court in the instant case and the decision of the Circuit Court of Appeals in the Railway Labor Act case since the function of the courts was entirely different under the two Acts and the elements of statutory exemption were also different.

4. The use of the word "a" before the words "general railroad system" in the first exemption proviso of Chapter VIII of the Bankruptcy Act clearly denotes that Congress there contemplated some *particular* operating railroad system exercising management, control and supervision over a particular street, suburban or interurban and that unless some such particular railroad system did exercise management, control and supervision over the street, suburban or interurban involved, the exemption applied.

5. Respondent only derived 17 per centum of its operating revenues from the transportation of freight in standard steam railroad freight equipment whereas the second or alternate exemption proviso of Chapter VIII of the Bankruptcy Act exempted street, suburban or interurban electric railways unless *more than 50 per centum* of its operating revenues were so derived.

6. The decision of the Circuit Court of Appeals in the instant Bankruptcy case is not in conflict with the decision

of this Court in the Securities case reported in *United States* v. *Chicago North Shore and Milwaukee Railroad Company,* 288 U. S. 1, involving securities of this respondent:

> The function of the District Court was the same under the Securities (20a) of the Interstate Commerce Act as it was here under Chapter VIII, Section 77, of the Bankruptcy Act, and each case Respondent was exempted as an interurban electric railway; the elements of statutory exclusion were also quite similar.
>
> Respondent was described by this Court in the Securities Case as a typical example of an interurban electric line for passenger service, which has developed, in addition, such freight traffic as could advantageously be undertaken without interfering with performance of the main purpose of the carrier; it is still predominantly a passenger carrier, deriving now, as then, approximately 77 per centum of its transportation revenues from passenger traffic.
>
> The percentage of Respondent's operating revenues derived from freight transported in standard steam railroad freight equipment falls far below the amount fixed by the Bankruptcy statute to take the carrier out of the exemption, thus eliminating freight carriage as a factor so long as the permissible percentage is not exceeded and making this even a stronger case in favor of exemption than the Securities Case.

ARGUMENT.

I.

The District Court Was Called Upon to Exercise Original Jurisdiction in Arriving at a Determination as to Whether the North Shore Was Subject to Chapter VIII, Section 77, or to Chapter X of the Bankruptcy Laws for Reorganization Purposes and Not to Act in a Reviewing Capacity.

Chapter VIII, Section 77, of the Bankruptcy Law (11 U. S. C. Sec. 205(a)) provides for the filing by a railroad subject to the Act of a voluntary petition for reorganization and also for the filing of an involuntary petition by creditors which may be answered by the carrier.

As to the filing of a voluntary petition by the carrier, the statutes specifically states:

> "Upon the filing of such a petition, the judge shall enter an order either approving it as properly filed under this section, if satisfied and that such petition complies with this section and has been filed in good faith, or dismissing it, if he is not so satisfied."

As to the filing by creditors of an involuntary petition and answer thereto by respondent, the statute specifically provides:

> "If such answer shall admit the jurisdiction of the court and the material allegations of the petition, the judge shall enter an order approving the petition as properly filed if satisfied that it complies with this section and has been filed in good faith, or dismissing it, if not so satisfied. If such answer shall deny either the jurisdiction of the court or any material allegation of the petition the judge shall summarily determine the issues presented by the pleadings without the intervention of a jury * * *."

Chapter X (11 U. S. C. 541 and 543) contains substantially the same provisions.

Under the Railway Labor Act (45 U. S. C. Sec. 151) and also the Railroad Retirement Act (45 U. S. C. 228a) and Carriers' Taxing Act (45 U. S. C. Sec. 261) specific authorization was delegated to the Interstate Commerce Commission to determine whether particular electric railways were included or excluded from those Acts. When the validity of a determination made by the Interstate Commerce Commission was challenged in court the case was not tried *de novo*, but, on the contrary, the courts acted in a reviewing capacity. (*Shields* v. *Idaho-Utah Central R. R. Co.*, 305 U. S. 177.) That was true as to the North Shore Railway Labor Act case. (*Sprague* v. *Woll*, 122 Fed. (2d) 128; certiorari denied, 314 U. S. 669.)

From the above quoted portions of the bankruptcy statutes it is readily apparent that no such authority was given to any administrative body under the bankruptcy statutes as was given under the Railway Labor Act; and no such authority has been claimed or exercised in the instant case.

II.

The Function of the Bankruptcy Court Was to Consider the Facts and Law Independently and to Use Its Own Judgment in Reaching a Conclusion.

Since, in the bankruptcy proceedings, the District Court was exercising original jurisdiction under the statutes involved and was not acting as a court of review, it was not limited or restricted as it was in the Railway Labor Act case where it acted in a reviewing capacity. The function of a court in reviewing the decision of an administrative body is, of course, different from its duty in determining a question independently. In the former case it accepts the

administrative judgment unless the Commission departed from the applicable rules of law or unless its findings lacked a basis in substantial evidence or were arbitrary and capricious; in the latter it makes up its own mind. (*Shields* v. *Idaho-Utah Central R. R. Co.*, 305 U. S. 177, 185; *United States* v. *Idaho*, 298 U. S. 105, 109.)

The contrast between the grant of authority to the Interstate Commerce Commission in the Railway Labor Act and the lack of such authority in the Bankruptcy Act shows that a decision under one statute is not necessarily controlling under the other, even if the two cases are indistinguishable on their facts.

The last cited case (*United States* v. *Idaho*, 298 U. S. 105, 109) arose over a dispute as to whether a certain section of track was a "spur" exempted from Section 1 (22) of the Interstate Commerce Act (49 U. S. C. Sec. 1 (22)). If exempted, authority to abandon operation thereof would have to be obtained from the State commission; but if it were not exempted from said statute, the Interstate Commerce Commission had authority to authorize abandonment. The latter attempted to exercise jurisdiction and entered an order allowing abandonment. The State and its Public Utilities Commission brought suit in the Federal Court to set aside the order. That statute, like the bankruptcy statutes here and *unlike* the Railway Labor Act contained no specific delegation of authority to the Interstate Commerce Commission to make a determination as to what was or was not a "spur". The lower court found that the track in question was a "spur". Incidentally the record made before the Interstate Commerce Commission was introduced in evidence in the court proceedings together with certain additional evidence, as was done in the instant case. This Court affirmed the lower court, on the ground that the findings of the court were amply supported by the evidence

and that the admission of the additional evidence was not error. This Court said (at page 109):

> "For whether certain trackage is a 'spur' is a mixed question of fact and law left by Congress to the decision of a court—not to a final determination of either the federal or a state commission.
>
> "This suit is not one brought to set aside for error or irregularity an order of the Commission on a matter within its jurisdiction. * * * Here the jurisdiction of that Commission was challenged."

In the present case the District Court was called upon to discharge its duty of determining as a mixed question of fact and law whether the North Shore was an interurban electric railway exempted under the language of the statute from Chapter VIII, Section 77, of the bankruptcy laws. The fact that it arrived at a different conclusion as to the applicability of the bankruptcy chapters to the North Shore than the Commission did with respect to wholly different statutes containing different elements of exemption, even though substantially the same evidence was adduced, seems immaterial. The Circuit Court of Appeals could find no error in the District Court's interpretation of its function under the statute (R. 663, at 667).

III.

No Conflict Exists Between the Decision in the Instant Bankruptcy Case and the Decision in the Railway Labor Act Case.

As the Circuit Court of Appeals has pointed out in its decision (R. 663, at 665) an important new element appeared in the section 77 (Chapter VIII) definition of a carrier for purposes of the Bankruptcy statute, namely, the statutory alternate exception of the street, suburban or interurban electric railway, "which does not derive more than 50 percentum of its operating revenues from the trans-

portation of freight in standard steam railroad freight equipment."

The very fact that Congress put into the statute the language in question shows that it recognized the fact that street, suburban and interurban electric railways do in this day and age transport freight in standard steam railroad freight equipment and that it elected to exclude such carriers from the statute unless the extent of such freight carriage exceeded the stated percentage. Otherwise the language would have been superfluous and without meaning and contrary to the elementary proposition that statutes will be construed so as to give every part of them some meaning. No such language appears in the exemption provisos of the Railway Labor Act, the Railroad Retirement Act and the Carriers' Taxing Act; and in all of its determinations as to the status of carriers under those Acts, the Interstate Commerce Commission seemed to consider the transportation of any substantial amount of freight in standard steam railroad freight equipment as a determining factor. In fact, the Commission formulated a definition in harmony with its various decisions which it seems to have followed generally to that effect. The Circuit Court of Appeals quoted that definition at some length. A statement of the Commission's policy also appears in its reports in the North Shore Railway Labor Act case (R. 219 and 563; 219 I. C. C. 135, 138 and 234 I. C. C. 13, 19). The same rule was stated in *Texas Electric Railway*, 208 I. C. C. 193, 202. By omitting from the Railway Labor Act the language it used in Chapter VIII, Section 77, of the Bankruptcy Act fixing a limitation as to freight, Congress invited, or at least left the door open to, the position taken by the Interstate Commerce Commission in the Labor Act cases. In Chapter VIII, Section 77, Congress closed the door. The application of one element of statutory exclusion contained in the Railway Labor Act to a case arising under that Act

and the application of a different element of statutory exclusion contained in the Bankruptcy Act to a case arising under that Act certainly cannot result in a conflict. That this is true is so apparent further discussion seems unnecessary. And in addition there is the further fact that the function of the courts in the two cases was entirely different.

IV.

Congress, in Using the Phrase "Unless Operated as a Part of a General Railroad System of Transportation," Intended to Take Out of the General Exemption as to Street, Suburban and Interurban Electric Railways Only Such of Them as Were in Fact Operated as a Part of Some One of the Many General Railroad Systems of the Country.

Petitioners contend in effect that the above quoted clause is to be read as though "a" is there used in the same sense as "the" was used in the Railway Labor Act exemption proviso.

Here again the exclusionary language of Chapter VIII, Section 77, differs from that contained in the Railway Labor Act, the Railroad Retirement Act and the Carriers' Taxing Act. Those latter mentioned Acts took out of the exemption, street, suburban and interurban electric railways which were operated as a part of *a* general steam-railroad system of transportation in almost the same identical language as is done in Chapter VIII, Section 77, of the Bankruptcy Act *and in addition thereto* also took out "any part of *the* general steam-railroad system of transportation." The Interstate Commerce Commission determined that the North Shore was a part of *the* general steam-railroad system of transportation (234 I. C. C. 13, 23). The original Section 77 of the Bankruptcy Act preceded the enactment of those other Acts and did not contain the additional clause in question and Chapter VIII, Section 77,

as it now stands does not contain that clause or phrase. *Hudson and Manhattan R. R. Co.*, 103 Fed. (2d) 327, involved the first abovementioned non-exclusionary clause in the exemption proviso of the Railway Labor Act, *i. e.*, "unless operated as a part of a general steam-railroad system of transportation." The Court there sustained the Commission's determination that the Hudson & Manhattan was operated as part of the "Pennsylvania system".

As both the District Court and the Circuit Court of Appears have pointed out, in the instant case, the use of the word "a" before the words "general railroad system" clearly denotes that Congress there contemplated some *particular* operating railroad system exercising management, control and supervision over a particular street, suburban or interurban (R. 633 at 641 and R. 663 at 668). It was so interpreted in the *Hudson and Manhattan* case.

In Funk & Wagnall's New Standard Dictionary of the English language (1921 Edition) it is pointed out that "the" is opposed to the indefinite article "a" and is used before a noun to make it generic.

Thus, in the Railway Labor Act exemption proviso, Congress took out of the exemption two kinds of interurban electric railways, *i. e.*, (1) those operated as part of *a* general steam-railroad system of which there are many, such as the Pennsylvania System, the New York Central System and the Illinois Central System, and (2) those which were constituted a part of *the* general steam-railroad system of the country as a whole; whereas, in the Bankruptcy Act (Chapter VIII, Section 77) exemption proviso, Congress took out of the exemption two kinds of interurban electric railways, *i. e.*, (1) those, as in the Railway Labor Act, operated as a part of *a* system, such as the Pennsylvania, the New York Central System or the Illinois Central System and (2) those whose freight business in standard steam-railroad freight equipment exceeded 50 per centum of its

transportation revenues. In other words, the second group taken out of the exemption in one Act was entirely different from the second group taken out of the exemption in the other Act.

Respondent is operated by electricity and performs a street car service, a suburban service and an interurban service (R. 289 and 398). It is not an electrified section of a steam railroad (R. 398). Its capital stock is owned by the general public (R. 399). There is no evidence in the record showing or purporting to show that any railroad system or other railroad of any kind exercises management, control or supervision over Respondent.

V.

The Decision in the Instant Bankruptcy Case Is Not in Conflict With the Decision of This Court in the North Shore Securities Case Reported in 288 U. S. 1.

In the North Shore Securities case (*United States* v. *Chicago North Shore and Milwaukee Railroad Company*, 288 U. S. 1 (page 7), 77 Law Ed. 583) this Court said *prior to the enactment of Section 77*, "the properties of the appellee have developed, through various transfers and reorganizations, out of a street railway company organized more than twenty-five years ago." The court then went on to describe in detail the road and its operations as they existed at the time of the Securities case and followed (page 10) with this language:

> "We thus have a typical example of an interurban electric line for passenger service, which has developed, in addition, such freight traffic as could advantageously be undertaken without interfering with performance of the main purpose of the carrier."

As previously pointed out, the extent of freight interchange with steam railroads has no controlling voice in

Chapter VIII, Section 77, until more than 50 per centum of total transportation revenue is from freight business in standard steam-railroad freight equipment as far as taking a particular carrier out of the exemption, but Congress, by its very use of language, shows it was treating with a type of carrier which did and could engage in freight business and still remain an interurban electric. Therefore, the fact that the North Shore, in the language of this Court had "developed, in addition, such freight traffic as could advantageously be undertaken without interfering with performance of the main purpose of the carrier" does not, as far as Chapter VIII, Section 77, of the Bankruptcy Act is concerned, change the road from being "a typical example of interurban electric line for passenger service." In its decision this Court also said "Passenger traffic, whether measured by car service or by gross earnings, heavily preponderates over interline freight business." The same is true today, approximately 77% of total transportation revenues being from passenger transportation (R. 34-36, 527-534). In 1930 total revenues from transportation (all classes) amounted to $6,091,402.59 whereas in 1941 total revenues from transportation (all classes) only amounted to $4,136,178.07 (R. 527 and 536). Here the freight activities of the North Shore fall far short of the percentage specifically set by Congress.

Since statutes are presumed to be enacted by the legislature with full knowledge of the existing conditions of the law and with reference to it (59 Corpus Juris, 1038, Par. 616-7), and since the North Shore at the time of enactment of Section 77 of the Bankruptcy Laws had been stated by this Court to be a "typical example of an interurban electric line for passenger service" which had developed, in addition, such freight traffic as could advantageously be undertaken without interfering with performance of the main purpose of that carrier, there is no merit to Peti-

tioners' contention that the North Shore is not an interurban electric railway under the language of the Congress used in Chapter VIII, Section 77, of the Bankruptcy Act.

In the construction of a statute it is elemental that it will be presumed that the legislature understood the meaning of the words it used and that it intended to use them. Also words which have previously been given a well defined meaning by the courts are presumed to have that same meaning in the statute (59 Corpus Juris 1008, 1012, Par. 600-5).

Not desiring to include in the Section 77 exemption *all* interurban electric railways, Congress removed two groups or classes of them from the exemption, to wit, those which were operated as a part of *a* general railroad system, and also those, even though independently operated, which had more than 50 per centum of their transportation revenue from the carriage of freight in standard steam railroad freight equipment.

The District Court in the instant case has found that there has been no substantial change in the functional or factual characteristics of the North Shore since the Securities case; that the percentage of freight revenues to passenger revenues remains substantially the same; that the same points continue to be served by North Shore passenger operations, both interurban and city service; that the same freight connections exist; that the same method of train dispatching is followed; the same terminal operations into Chicago and Milwaukee obtain; that revenues have decreased and increased with the passing years (R. 639). The record before the court sustains those findings and no testimony can be found in the record contraverting the figures set forth on pages 33 to 36, inclusive (offered R. 29), and 527 to 534, inclusive (offered R. 384-387), of the Printed Record showing the almost constant relationship between passenger revenues and freight revenues from 1930 to 1941, inclusive. As to the same

points being served by passenger operations, compare the findings of the District Court in the Securities case (R. 190) to testimony of Witness Thompson (R. 241). In the Securities case the court found that there were connections with four steam railroads at thirteen points (R. 195). In this case the testimony shows connections with the four steam railroads at eight points (R. 308). Dispatching was and is by telephone (R. 204 and 346). Standard practices of issuing and receiving and execution of train orders were the same in the Securities case as now (R. 204 and 345-346). Operation into Chicago is over the elevated structures of Chicago Rapid Transit Company and into Milwaukee over the local street railway tracks of the Chicago and Milwaukee Electric Railway Company and has not changed (R. 191, 403 and 404). Forty passenger trains daily were operated between Chicago and Milwaukee at the time of the Securities case (R. 203). Forty or forty-one are operated today according to time table exhibit (R. 605). Street car service was then and is now performed by the North Shore in Waukegan (R. 203 and 289). The North Shore performs all street car and bus service in and between Waukegan and North Chicago (R. 404-405). The same was true at the time of the Securities Case decision (R. 191). When the Securities case was tried the North Shore owned seven locomotives (R. 198) and the same was true in 1939 (R. 418). By coupling these together the hauling capacity is increased (R. 257-258). In fact one could go on in great detail showing the same conditions existed prior to enactment of Section 77 of the Bankruptcy Act as exist today, so that whatever appreciable changes in the functional characteristics of the North Shore which have occurred since its inception, pre-date said Section 77.

It is indeed difficult to perceive by what possible theory conflict could be said to exist between the decision of the

Circuit Court of Appeals in the instant case and the decision of this Court in the Securities case.

There is no conflict between the decision below and that of any other Circuit Court of Appeals or of this Court. The District Court upon whom was imposed the original jurisdiction of construing Chapter VIII, Section 77, and Chapter X of the Bankruptcy Law as to their application to the North Shore, correctly found as a mixed question of fact and law that the North Shore was an interurban electric railway excluded from Chapter VIII, Section 77, and therefore entitled to reorganization under said Chapter X and that its action in dismissing the petition filed under the former and sustaining the petition filed under the latter was correctly affirmed by the Circuit Court of Appeals. Accordingly, the petition for certiorari should be denied.

Respectfully submitted,

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